

TENTATIVE RULINGS for CIVIL LAW and MOTION
October 5, 2009

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6942
Department One: (530) 406-6888

TENTATIVE RULING

Case: **Baggarly v. D.R. Horton, Inc. et al.**
Case No. CV CV 07-2737

Hearing Date: October 5, 2009, Department Fifteen 9:00 a.m.

Plaintiffs' motion to continue the trial date is **GRANTED**. (Cal. Rules of Court, rule 3.1332.) Plaintiffs made an affirmative showing of good cause for the continuance of the trial date.

The trial readiness conference set for October 5, 2009, is **VACATED**.

The parties are **ORDERED TO ATTEND** a further case management conference on Thursday, October 15, 2009, at 1:30 p.m. in Department 10.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: Beesley v. K.H. Moss Co. et al.
Case No. CV CV 09-1189

Hearing Date: **October 5, 2009** **Department Fifteen** **9:00 a.m.**

Plaintiffs' motion for an order authorizing leave to file a first amended complaint is **GRANTED**. (Code Civ. Proc., § 473.) Plaintiff shall file the first amended complaint by October 7, 2009.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: Black v. Regents of the University of California
Case No. CV CV 09-305

Hearing Date: October 5, 2009 **Department** Fifteen **9:00 a.m.**

The Court considered the late-filed opposition brief. **The Court will not consider late-filed papers by any party in this action in the future.**

Request for judicial notice: Defendants' request for judicial notice is **GRANTED**. (Evid. Code, § 452, subds. (c) and (d).) The Court also takes notice of the Department of Fair Employment and Housing ("DFEH") complaints attached to the opposition brief.

First cause of action for race harassment: The demurrer to the first cause of action for race harassment based on failure to exhaust administrative remedies under the Fair Employment and Housing Act ("FEHA") is **OVERRULED**. (*Baker v. Children's Hospital Medical Center* (1989) 209 Cal.App.3d 1057.) The Court cannot conclude that the plaintiff's claim of race harassment is not like or related to nor likely to be discovered in a reasonable investigation of the plaintiff's DFEH charge of race discrimination and retaliation. Plaintiff filed DFEH complaints against the individual defendants.

The demurrer by Brad St. Clair, Maurice Hollman and Allen Tollefson ("Individual Defendants") to the first cause of action for race harassment on the ground that the amended complaint fails to state a cause of action is **SUSTAINED WITH LEAVE TO AMEND**. Plaintiff seeks to hold the Individual Defendants personally liable for race harassment. In order to do so, the plaintiff must allege facts to establish that each of these defendants harassed him because of his race, i.e., that the plaintiff was subjected to harassment by each of these defendants that was sufficiently severe or pervasive to alter the conditions of the plaintiff's employment and create an abusive working environment. (*Ettinger v. Veriflo Corp.* (1998) 67 Cal.App.4th 457, 465-467.) The conduct specifically attributed to each of the Individual Defendants is insufficient to plead a cause of action for race harassment against each of them.

The demurrer by the Regents to the first cause of action for race harassment on the ground that the amended complaint fails to state a cause of action is **SUSTAINED WITH LEAVE TO AMEND**. An employer is strictly liable for harassment by a supervisor. Because the amended complaint does not plead sufficient facts to allege race harassment by the Individual Defendants, all of whom are allegedly managerial employees, the plaintiff has also not pled sufficient facts to make the Regents strictly liable for harassment by a supervisor. To the extent the race harassment cause of action is based on harassment by non-supervisor employees, the amended complaint does not allege that the Regents knew or should have known of the harassment against the plaintiff. (Govt. Code, § 12940, subd. (k)(1).)

Fourth cause of action for intentional infliction of emotional distress: The Individual Defendants' demurrer to the fourth cause of action is **SUSTAINED WITH LEAVE TO AMEND**. The acts alleged against Maurice Hollman and Allen Tollefson are personnel management actions. Such acts are not "extreme and outrageous" conduct. (*Janken v. GM*

Hughes Electronics (1996) 46 Cal.App.4th 55, 80.) Some of the acts attributed to Brad St. Clair are personnel management acts. Additionally, there are insufficient facts alleged to show that Mr. St. Clair's conduct in relation to pigs with wings and preventing the plaintiff from seeking assistance from human resources constitute "extreme and outrageous" conduct. If properly pled, harassment by the Individual Defendants will constitute outrageous behavior. (*Fisher v. San Pedro Peninsula Hospital* (1989) 214 Cal.App.3d 590, 618.)

The Regents' demurrer to the fourth cause of action was previously sustained without leave to amend based on *Miklosy v. The Regents of the Univ. of California* (2008) 44 Cal.4th 876. Plaintiff shall amend his complaint consistent with the Court's prior ruling.

The demurrer based on the Workers' Compensation Act is **OVERRULED**. (*Fretland v. County of Humboldt* (1999) 69 Cal.App.4th 1478, 1492.)

The demurrer based on exhausting remedies provided by the University is **OVERRULED**. (*Williams v. Housing Auth. Of Los Angeles* (2004) 121 Cal.App.4th 708, 727.) Neither the face of the amended complaint nor any matter of which this Court has been asked to take judicial notice shows that an internal administrative remedy which provides a quasi-judicial proceeding is available to the plaintiff.

The demurrer based on *Sheppard v. Freeman* (1998) 67 Cal.App.4th 339 is **OVERRULED**. Under the holding of *Sheppard*, an emotional distress claim may be based on a properly pled harassment cause of action. (*Sheppard, supra*, at 346, fn.6.)

Fifth cause of action for negligent infliction of emotional distress: The Regents' demurrer to this cause of action was previously sustained without leave to amend based on *Miklosy v. The Regents of the Univ. of California*. Plaintiff shall amend his complaint consistent with the Court's prior ruling.

The Individual Defendants' demurrer based on the Workers' Compensation Act is **OVERRULED**. It cannot be argued that harassment does not contravene fundamental public policy or exceed the risks inherent in employment. Moreover, it has not been established that the Workers' Compensation Act bars remedies against co-workers, as opposed to the employer.

For the reasons stated above, the demurrer based on exhausting remedies provided by the University is **OVERRULED**.

The demurrer based on intentional conduct is also **OVERRULED**. The conduct alleged against the Individual Defendants does not necessarily involve intentional conduct. (*See, e.g., FAC ¶ 21(i).*)

Sixth cause of action for violation of Labor Code section 1102.5: This demurrer is **OVERRULED**. Neither the face of the amended complaint nor any matter of which this Court has been asked to take judicial notice shows the existence of an internal administrative remedy.

Plaintiff shall file a second amended complaint by no later than October 19, 2009.

If no hearing is requested, the tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: Grywczynski v. Smith
Case No. CV PM 07-1582

Hearing Date: October 5, 2009, Department Fifteen 9:00 a.m.

Plaintiffs' motion to continue the trial date is **DENIED**. (Cal. Rules of Court, rule 3.1332.) Plaintiffs failed to make an affirmative showing of good cause for the continuance of the trial date.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: Hooshnam v. Gattaglia
Case No. CV CV 07-1779

Hearing Date: October 5, 2009 Department One 1:30 p.m.

The motion to set aside the default and default judgment brought by Defendants Rebeca Daman, Jim Daman and Eugene Grover, dba Independent Real Estate Brokers is **GRANTED**. (Code Civ. Proc., § 437.) Defendants are granted leave to file their response(s) by October 7, 2009.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: Portfolio Recovery Associates, LLC v. Chavarria
Case No. CV G 09-1785

Hearing Date: October 5, 2009 Department Fifteen 9:00 a.m.

The unopposed petition to confirm arbitration award by Portfolio Recovery Associates, LLC is **DENIED WITHOUT PREJUDICE**. (Code Civ. Proc., § 1286.) There is no proof of service showing service of the petition on the respondent.

If no hearing is requested, the tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Wells Fargo Bank, N.A. v. Bellard**
 Case No. CV UD 09-736

Hearing Date: **October 5, 2009** **Department Fifteen** **9:00 a.m.**

Plaintiff's unopposed motion for summary judgment is **GRANTED**. (Code Civ. Proc., § 437c; 1161a *et seq.*; Civ. Code, § 2924.) Plaintiff has established each element of its unlawful detainer cause of action.

Plaintiffs are directed to prepare a formal order consistent with this ruling and in accordance with Code of Civil Procedure section 437c, subdivision (g) and California Rules of Court, rule 3.1312.